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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF OREGON**  
**PORTLAND DIVISION**

NICHOLE L. KONOLOFF and  
JASON EAVES,

Plaintiffs,

v.

SAFECO INSURANCE COMPANY OF  
AMERICA, a Liberty Mutual Company;  
SUBARU OF AMERICA, INC.; and  
SUBARU CORPORATION, f/k/a FUJI  
HEAVY INDUSTRIES, LTD.,

Defendants.

Case No. 3:20-cv-01622-AC

**DEFENDANT SUBARU OF AMERICA,  
INC.'S ANSWER AND AFFIRMATIVE  
DEFENSES**

**DEMAND FOR JURY TRIAL**

In response to Plaintiffs' Complaint, Defendant Subaru of America, Inc. ("SOA") hereby answers, alleges, and denies as follows:

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1.

The allegations of paragraph 1 of the Complaint are not directed at SOA and therefore no response is required. To the extent a response is required, SOA lacks sufficient knowledge or information to admit or deny the allegations.

2.

In response to the allegations of paragraph 2 of the Complaint, SOA admits that it incorporated under the laws of New Jersey with its principal place of business in New Jersey. SOA denies that it designs, manufactures, or sells vehicles directly to retail consumers in the ordinary course of its business. SOA admits that it is the United States distributor of Subaru vehicles, accessories, and parts. SOA admits that it conducts business in the State of Oregon, including Multnomah County, and further admits that it has a registered agent for service of process in the State of Oregon. Except as expressly admitted, SOA denies all other allegations of paragraph 2.

3.

The allegations of paragraph 3 of the Complaint are not directed at SOA and therefore no response is required. To the extent a response is required, SOA admits that it is a wholly owned subsidiary of Subaru Corporation (“SBR”). SOA admits that SBR is a foreign corporation based in Japan. SOA admits that SBR designs and manufactures Subaru vehicles. Except as expressly admitted, SOA denies all other allegations of paragraph 3.

4.

In response to the allegations of paragraph 4 of the Complaint, SOA admits that it incorporated under the laws of New Jersey with its principal place of business in New Jersey. SOA admits that is a wholly owned subsidiary of SBR. SOA denies that it designs, manufactures, or sells vehicles directly to retail consumers in the ordinary course of its business. SOA admits

that it is the United States distributor of Subaru vehicles, accessories, and parts. Except as expressly admitted, SOA denies all other allegations of paragraph 4.

5.

In response to the allegations of paragraph 5 of the Complaint, SOA admits that it is a wholly owned subsidiary of SBR. SOA admits that it is the United States distributor of Subaru vehicles, accessories, and parts. SOA admits that it operates regional offices in different geographical areas of the United States. SOA admits that Subaru vehicles are sold to retail consumers through independent authorized retailers located throughout the United States. Except as expressly admitted, SOA denies all other allegations of paragraph 5.

6.

The allegations of paragraph 6 of the Complaint are not directed at SOA and therefore no response is required. To the extent a response is required, SOA admits that it markets, distributes, and warrants Subaru vehicles in the United States. Except as expressly admitted, SOA denies all other allegations of paragraph 6.

7.

Paragraph 7 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 7 is directed at SOA, SOA admits that it transacts business in Multnomah County, Oregon. SOA lacks sufficient knowledge or information to admit or deny the remaining allegations of paragraph 7 and therefore denies the same.

8.

In response to the allegations of paragraph 8 of the Complaint, and to the extent paragraph 8 is directed at SOA, SOA lacks sufficient knowledge or information to admit or deny the allegations and therefore denies the same.

9.

In response to the allegations of paragraph 9 of the Complaint, and to the extent paragraph 9 is directed at SOA, SOA lacks sufficient knowledge or information to admit or deny any allegations relating to Plaintiffs' alleged vehicle accident. SOA denies Plaintiffs' allegation that the subject vehicle was defective, or that any alleged defect caused the alleged accident.

10.

In response to the allegations of paragraph 10 of the Complaint, and to the extent paragraph 10 is directed at SOA, SOA lacks sufficient knowledge or information to admit or deny any allegations relating to Plaintiffs' alleged vehicle accident. SOA denies Plaintiffs' allegation that the subject vehicle was defective, or that any alleged defect caused the alleged accident.

11.

The allegations of paragraph 11 of the Complaint are not directed at SOA and therefore no response is required.

12.

In response to the allegations of paragraph 12 of the Complaint, and to the extent paragraph 12 is directed at SOA, SOA lacks sufficient knowledge or information to admit or deny the allegations of paragraph 12 and therefore denies the same. SOA denies, generally, that it is in the business of selling "automobile warranty policies" directly to retail consumers.

13.

To the extent paragraph 13 of the Complaint is directed at SOA, SOA denies.

14.

In response to the allegations of paragraph 14 of the Complaint, and to the extent paragraph 14 is directed at SOA, SOA denies that it designs or manufactures vehicles in the ordinary course of its business. SOA admits that it is the United States distributor of Subaru vehicles, including the models identified in paragraph 14. SOA denies that the various vehicle models listed in paragraph

14 are relevant to this lawsuit. SOA objects to and denies Plaintiffs' characterization of the vehicles referenced in paragraph 14 as "Recalled Vehicles" and further denies all of the remaining allegations of paragraph 14.

15.

In response to the allegations of paragraph 15 of the Complaint, and to the extent paragraph 15 is directed at SOA, SOA denies.

16.

Paragraph 16 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 16 is directed at SOA, SOA denies.

17.

In response to the allegations of paragraph 17 of the Complaint, and to the extent paragraph 17 is directed at SOA, SOA denies.

18.

Paragraph 18 of the Complaint quotes an alleged consumer complaint to NHTSA. SOA lacks sufficient knowledge or information about the alleged consumer complaint to admit or deny the allegations contained in the complaint. SOA denies that the alleged consumer complaint is relevant to the subject matter of this lawsuit. SOA further denies that the vehicle referenced in the alleged consumer complaint was defective, or that any alleged defect caused the alleged accident.

19.

Paragraph 19 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 19 is directed at SOA, SOA denies.

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20.

In response to the allegations of paragraph 20 of the Complaint, and to the extent paragraph 20 is directed at SOA, SOA denies.

21.

Paragraph 21 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 21 is directed at SOA, SOA denies.

22.

In response to the allegations of paragraph 22 of the Complaint, and to the extent paragraph 22 is directed at SOA, SOA denies.

23.

In response to the allegations of paragraph 23 of the Complaint, and to the extent paragraph 23 is directed at SOA, SOA admits that it is the United States distributor of Subaru vehicles. SOA denies the remaining allegations of paragraph 23 to the extent they are overly vague and/or not directed at SOA.

24.

In response to the allegations of paragraph 24 of the Complaint, and to the extent paragraph 24 is directed at SOA, SOA admits that it is the United States distributor of Subaru vehicles. SOA admits that Subaru vehicles are sold to retail consumers by independent authorized retailers. SOA denies that it exercises control over the day-to-day operations of independent authorized retailers and denies all other allegations of paragraph 24.

25.

In response to the allegations of paragraph 25 of the Complaint, and to the extent paragraph 25 is directed at SOA, SOA objects to and denies Plaintiffs' characterization of the vehicle models identified in paragraph 14 of the Complaint, including the subject 2014 Subaru Forester 2.5i, as

“Recalled Vehicles.” On information and belief, the subject 2014 Subaru Forester 2.5i that is the subject matter of this individual lawsuit has never been recalled for alleged unintended acceleration. SOA admits that new Subaru vehicles are covered by applicable express limited warranties. SOA is without sufficient knowledge or information to admit or deny the remaining allegations of paragraph 25 and therefore denies the same.

26.

In response to the allegations of paragraph 26 of the Complaint, and to the extent paragraph 26 is directed at SOA, SOA admits that new Subaru vehicles are covered by express limited warranties as stated in the applicable warranty and maintenance booklets. The terms of any express written warranty speak for themselves. SOA lacks sufficient knowledge or information to admit or deny any allegations relating to the specific warranty coverage (if any) that allegedly applies to the relevant subject vehicle.

27.

In response to the allegations of paragraph 27 of the Complaint, and to the extent paragraph 27 is directed at SOA, SOA admits that new Subaru vehicles are covered by express limited warranties as stated in the applicable warranty and maintenance booklets. The terms of any express written warranty speak for themselves. SOA lacks sufficient knowledge or information to admit or deny any allegations relating to the specific warranty coverage (if any) that allegedly applies to the relevant subject vehicle.

28.

Paragraph 28 of the Complaint appears to quote language from the warranty booklet for a vehicle model that is not at issue in this lawsuit. Therefore, the allegations of paragraph 28 are irrelevant and no answer is required. To the extent a response is required, and to the extent paragraph 28 is directed at SOA, SOA is without sufficient knowledge or information to admit or deny the accuracy or source of the quoted language and on that basis denies the allegations.

29.

Paragraph 29 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 29 is directed at SOA, SOA denies.

30.

Paragraph 30 of the Complaint purports to quote promotional language found online. SOA is without sufficient knowledge or information to admit or deny the accuracy or source of the quoted language and on that basis denies the allegations of paragraph 30.

31.

Paragraph 31 of the Complaint purports to quote promotional language found online. SOA is without sufficient knowledge or information to admit or deny the accuracy or source of the quoted language and on that basis denies the allegations of paragraph 31.

32.

Paragraph 32 of the Complaint purports to quote promotional language found online. SOA is without sufficient knowledge or information to admit or deny the accuracy or source of the quoted language and on that basis denies the allegations of paragraph 32.

33.

In response to the allegations of paragraph 33 of the Complaint, and to the extent paragraph 33 is directed at SOA, SOA denies.

34.

In response to the allegations of paragraph 34 of the Complaint, and to the extent paragraph 34 is directed at SOA, SOA denies.

35.

In response to the allegations of paragraph 35 of the Complaint, and to the extent paragraph 35 is directed at SOA, SOA denies.



36.

In response to the allegations of paragraph 36 of the Complaint, and to the extent paragraph 36 is directed at SOA, SOA is without sufficient knowledge or information to admit or deny the allegations relating to any alleged vehicle accident involving Plaintiffs. SOA denies the allegation of paragraph 36 that any alleged vehicle accident was caused by a vehicle defect.

37.

In response to the allegations of paragraph 37 of the Complaint, and to the extent paragraph 37 is directed at SOA, SOA denies.

38.

In response to the allegations of paragraph 38 of the Complaint, and to the extent that paragraph 38 is directed at SOA, SOA denies.

39.

Paragraph 39 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 39 is directed at SOA, SOA states that the cited law, TREAD Act, Pub. L. No. 106-414, 114 Stat. 1800 (2000), speaks for itself.

40.

Paragraph 40 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 40 is directed at SOA, SOA states that the cited law, TREAD Act, Pub. L. No. 106-414, 114 Stat. 1800 (2000), speaks for itself. SOA denies the remaining allegations of paragraph 40.

41.

In response to the allegations of paragraph 41 of the Complaint, and to the extent paragraph 41 is directed at SOA, SOA denies.

42.

In response to the allegations of paragraph 42 of the Complaint, and to the extent paragraph 42 is directed at SOA, SOA denies.

43.

In response to the allegations of paragraph 43 of the Complaint, and to the extent paragraph 43 is directed at SOA, SOA denies.

44.

Paragraph 44 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 44 is directed at SOA, SOA denies.

45.

In response to the allegations of paragraph 45 of the Complaint, and to the extent paragraph 45 is directed at SOA, SOA admits that it communicates with independent authorized dealerships and maintains a warranty claim system applicable to certain Subaru vehicles. SOA denies the remaining allegations of paragraph 45.

46.

In response to the allegations of paragraph 46 of the Complaint, and to the extent paragraph 46 is directed at SOA, SOA admits that it communicates with independent authorized dealerships and maintains a warranty claim system applicable to certain Subaru vehicles. SOA denies the remaining allegations of paragraph 46.

47.

Paragraph 47 of the Complaint quotes two alleged consumer complaints to NHTSA. SOA lacks sufficient knowledge or information about the alleged consumer complaints to admit or deny the allegations contained in the complaints. SOA denies that the alleged consumer complaints are relevant to the subject matter of this lawsuit. SOA further denies that the vehicles referenced in

the alleged consumer complaints were defective, or that any alleged defects caused the alleged accidents.

48.

Paragraph 48 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 48 is directed at SOA, SOA denies.

49.

Paragraph 49 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 49 is directed at SOA, SOA denies.

50.

Paragraph 50 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 50 is directed at SOA, SOA denies.

51.

Paragraph 51 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 51 is directed at SOA, SOA is without sufficient knowledge or information to admit or deny the allegations of paragraph 51 regarding Plaintiffs' alleged subjective expectations or motivations in allegedly purchasing the subject vehicle and therefore denies the same. SOA denies the remaining allegations of paragraph 51.

52.

Paragraph 52 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 52 is directed at SOA, SOA denies.

53.

Paragraph 53 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 53 is directed at SOA, SOA denies.

54.

Paragraph 54 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 54 is directed at SOA, SOA denies.

55.

Paragraph 55 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 55 is directed at SOA, SOA denies.

56.

Paragraph 56 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 56 is directed at SOA, SOA denies.

57.

Paragraph 57 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 57 is directed at SOA, SOA denies.

#### COUNT 1: EXPRESS WARRANTY

58.

SOA realleges and incorporates by reference its responses set forth in the foregoing paragraphs.

59.

In response to the allegations of paragraph 59 of the Complaint, and to the extent paragraph 59 is directed at SOA, SOA is without sufficient knowledge or information to admit or deny the allegations of paragraph 59 and therefore denies the same.

60.

Paragraph 60 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 60 is directed at SOA, SOA is without sufficient knowledge or information to admit or deny the allegations of paragraph 60 and therefore denies the same.

61.

Paragraph 61 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 61 is directed at SOA, SOA denies.

62.

Paragraph 62 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 62 is directed at SOA, SOA is without sufficient knowledge or information to admit or deny the allegations of paragraph 62 and therefore denies the same.

63.

Paragraph 63 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 63 is directed at SOA, SOA denies that the list of alleged “Recalled Vehicles” is relevant to the subject matter of this lawsuit. SOA admits that new Subaru vehicles are subject to certain express limited warranties and the terms of those warranties speak for themselves. SOA denies the remaining allegations of paragraph 63.

64.

Paragraph 64 of the Complaint appears to quote language from the warranty booklet for an unidentified Subaru vehicle. SOA is without sufficient knowledge or information to admit or deny the accuracy or source of the quoted language. To the extent a response is required, and to the extent paragraph 64 is directed at SOA, SOA states that the quoted language speaks for itself.

65.

Paragraph 65 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 65 is directed at SOA, SOA denies.

66.

Paragraph 66 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 66 is directed at SOA, SOA denies.

67.

Paragraph 67 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 67 is directed at SOA, SOA denies.

68.

Paragraph 68 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 68 is directed at SOA, SOA denies that Plaintiffs' description of "Recalled Vehicles" is accurate or relevant to the subject matter of this lawsuit. SOA denies the remaining allegations of paragraph 68.

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69.

Paragraph 69 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 69 is directed at SOA, SOA denies.

COUNT 2: IMPLIED WARRANTY OF MERCHANTABILITY

70.

SOA realleges and incorporates by reference its responses set forth in the foregoing paragraphs.

71.

In response to the allegations of paragraph 71 of the Complaint, and to the extent paragraph 71 is directed at SOA, SOA is without sufficient knowledge or information to admit or deny the allegations of paragraph 71 and therefore denies the same.

72.

Paragraph 72 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 72 is directed at SOA, SOA denies.

73.

Paragraph 73 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 73 is directed at SOA, SOA denies.

74.

Paragraph 74 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 74 is directed at SOA, SOA is without sufficient knowledge or information to admit or deny the allegations and therefore denies the same.

75.

Paragraph 75 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 75 is directed at SOA, SOA denies.

76.

Paragraph 76 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 76 is directed at SOA, SOA denies that Plaintiffs' description of "Recalled Vehicles" is accurate or relevant to the subject matter of this lawsuit. SOA denies the remaining allegations of paragraph 76.

77.

Paragraph 77 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 77 is directed at SOA, SOA denies.

78.

Paragraph 78 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 78 is directed at SOA, SOA denies.

79.

Paragraph 79 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 79 is directed at SOA, SOA denies.

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80.

Paragraph 80 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 80 is directed at SOA, SOA denies.

81.

Paragraph 81 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 81 is directed at SOA, SOA denies.

82.

Paragraph 82 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 82 is directed at SOA, SOA denies.

83.

Paragraph 83 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 83 is directed at SOA, SOA denies.

84.

Paragraph 84 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 84 is directed at SOA, SOA denies.

85.

Paragraph 85 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 85 is directed at SOA, SOA denies.

COURT III: ALLEGED FRAUD

86.

SOA realleges and incorporates by reference its responses set forth in the foregoing paragraphs.

87.

Paragraph 87 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 87 is directed at SOA, SOA denies.

88.

Paragraph 88 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 88 is directed at SOA, SOA denies.

89.

Paragraph 89 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 89 is directed at SOA, SOA denies.

COUNT IV: ALLEGED UNLAWFUL BUSINESS, TRADE PRACTICES

90.

SOA realleges and incorporates by reference its responses set forth in the foregoing paragraphs.

91.

Paragraph 91 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 91 is directed at SOA, SOA denies.

92.

Paragraph 92 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 92 is directed at SOA, SOA is without sufficient knowledge or information to admit or deny the allegations and therefore denies the same.

93.

Paragraph 93 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 93 is directed at SOA, SOA denies.

94.

Paragraph 94 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 94 is directed at SOA, SOA states that the cited statute, ORS 646.607, speaks for itself.

95.

Paragraph 95 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 95 is directed at SOA, SOA denies.

96.

Paragraph 96 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 96 is directed at SOA, SOA denies.

97.

Paragraph 97 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 97 is directed at SOA, SOA denies.

98.

Paragraph 98 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 98 is directed at SOA, SOA denies.

99.

Paragraph 99 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 99 is directed at SOA, SOA denies.

100.

Paragraph 100 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 100 is directed at SOA, SOA denies.

101.

Paragraph 101 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 101 is directed at SOA, SOA denies.

102.

Paragraph 102 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 102 is directed at SOA, SOA denies.

103.

Paragraph 103 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 103 is directed at SOA, SOA denies.

104.

Paragraph 104 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 104 is directed at SOA, SOA denies.

105.

Paragraph 105 of the Complaint contains conclusions of law and not factual allegations to which an answer is required. To the extent a response is required, and to the extent paragraph 105 is directed at SOA, SOA denies.

106.

In response to the allegations of paragraph 106, and to the extent paragraph 106 is directed at SOA, SOA denies Plaintiffs' alleged damages and prayer for relief in their entirety.

**AFFIRMATIVE DEFENSES**

By way of further answer and affirmative defense, SOA alleges as follows:

**FIRST AFFIRMATIVE DEFENSE**

(Failure to State a Claim)

107.

Plaintiffs' Complaint fails to state a claim upon which relief can be granted against SOA.

**SECOND AFFIRMATIVE DEFENSE**

(Comparative Fault of Plaintiffs)

108.

Plaintiffs' alleged injuries and damages were caused by the fault of Plaintiffs. Plaintiffs' recovery should be barred or reduced in proportion to the degree of fault attributable to Plaintiffs.

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### THIRD AFFIRMATIVE DEFENSE

(Fault of Others)

109.

Plaintiffs' alleged injuries and damages were caused by the fault of others over whom SOA has no legal responsibility, including others whose identity may be revealed through discovery. Any recovery from SOA should be reduced in proportion to the degree of fault attributable to other persons or parties.

### FOURTH AFFIRMATIVE DEFENSE

(State of the Art)

110.

The state of the medical, scientific, and industrial knowledge and practices were at all material times such that SOA neither breached any alleged duty owed to Plaintiffs, nor knew, or could have known, that the subject vehicle it allegedly distributed presented a foreseeable risk of harm to Plaintiffs in the normal and expected use of such a product. Any products, substances, or equipment allegedly distributed by SOA were made consistent with state of the art and state of the industry applicable to said products at the time of their manufacture and/or sale.

### FIFTH AFFIRMATIVE DEFENSE

(Abnormal Misuse, Modification, and/or Superseding Cause)

111.

Plaintiffs' alleged injuries and damages were caused by abnormal misuse or modification of the product and/or intervening or superseding causes.

### SIXTH AFFIRMATIVE DEFENSE

(Federal Preemption)

112.

Some or all of Plaintiffs' state law claims may be preempted by federal law.

SEVENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

113.

Plaintiffs may have failed to mitigate their damages.

EIGHTH AFFIRMATIVE DEFENSE

(Warranty Disclaimer or Limitation)

114.

Some or all of Plaintiffs' claims and requested remedies asserted against SOA may be barred under the terms of Plaintiffs' purchase agreement or the applicable express limited warranty. This includes, but is not limited to, Plaintiffs' failure to participate in pre-suit informal dispute settlement procedures.

NINTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

115.

Some or all of Plaintiffs' claims may be barred by the applicable statute of limitations.

TENTH AFFIRMATIVE DEFENSE

(Lack of Privity of Contract)

116.

Some or all of Plaintiffs' claims for relief may be barred based on lack of contractual privity.

ELEVENTH AFFIRMATIVE DEFENSE

(Spoliation of Evidence)

117.

Some or all of Plaintiffs' claims may be barred based on spoliation of evidence.

TWELFTH AFFIRMATIVE DEFENSE

(Reservation of Additional Defenses)

118.

SOA reserves the right to plead additional affirmative defenses or cross-claims as further discovery and investigation may warrant.

WHEREFORE, having fully answered the Complaint, SOA prays for the following relief:

- (a) Dismissal of the Plaintiffs' Complaint with prejudice;
- (b) An award of SOA's costs and disbursements as authorized by law; and
- (c) Such other and further relief in favor of SOA as may be deemed just and equitable.

DATED: September 30, 2020.

MB LAW GROUP, LLP

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